TITLE:	State Tort Claims Administration
PURPOSE:	To describe claims management procedures used to administer liability claims and suits covered by the COMMONWEALTH OF VIRGINIA RISK MANAGEMENT PLAN
POLICY:	The Division of Risk Management (DRM) shall establish, maintain and administer risk management plans pursuant to §§ 2.2-1837 and 2.2-1838 of the *Code of Virginia* (providing parties identified by statute, to the extent required by statute, protection against liability imposed by law for damages arising from acts or omissions of any nature when parties perform in an authorized governmental or proprietary capacity and within the course and scope of employment or authorization). DRM may settle liability cases pre-litigation on behalf of the Plan members within authority delegated by the Office of the Attorney General (OAG).
PROCEDURE:	Members, claimants and / or their legal representatives, and the OAG send claim notices, notices of potential claim and suit papers to the DRM claims unit.

Claim technicians collect reported information and check the risk management information system (Civitas) for previously received related reports and/or files. Claim technicians (a) attach reported information to previously received materials and pass to assigned claim handler, or (b) attach to any previously created inactive files and pass to senior claim staff, or (c) note "nothing found" on the face of the reported information and pass to senior claim staff.

Senior claim staff review and give written instructions for distribution on the face of paperwork received, record case assignments in unit log, and return paperwork to claim technicians for file set up.

Claim technicians generate Civitas records and create paper files. Claim technicians distribute active notices of claim to assigned staff members for handling and establish incident records for inactive paperwork. Inactive files are stored on site. For lawsuits filed against state agencies, see "Suits", below.

All persons performing file related activities maintain in each electronic file: progress notes, a diary ("to do" list) of future file activity and a complete account of all financial activities.

Claims (pre-litigation):

Coverage assessment
The file handler examines the reported claim and relevant statutes, regulations and procedures; conducts investigation, as needed; reviews the terms of the risk management plan; and informs members about the status of coverage.

Handling covered claims
When a claim is covered, the file handler investigates the facts (using outside resources as necessary and as authorized by DRM management), analyzes covered parties' liability, assesses monetary exposures, establishes reserves and maintains progress notes in Civitas. If the loss exposure of a file is valued at or above $100,000, a file handler must prepare an initial large loss report within six months following file assignment and must distribute the report to the handler's supervisor, DRM Director and DRM Assistant Director. The file handler must update and re-distribute the large loss report when significant events occur (e.g. increase or decrease in exposure, additional significant facts are discovered or develop, etc.) as necessary.

If the value of the claim exceeds the monetary authority delegated to DRM by the OAG:
- File handler makes internal report to DRM as provided in handler's performance expectations
- File handler ensures that Civitas accurately reflects the monetary exposure and the level of DRM's involvement
- File handler calculates the expiration date for the statute of limitations, then transfers file to claim technician with instructions to diary for closure (if no further activity generates) on that date.
- Claim technician establishes diary date in Civitas, generates memo to OAG, Civil Litigation Section (DRM file number, claimant's name, affected agency, monetary exposure, one-line summary of the claim) notifying OAG to contact DRM for additional details
- Claim technician files information received during the life of the file, forwards correspondence and refers claimants or legal representatives to the OAG, and provides information from the file to the OAG if, when and in the manner requested.
- Claim technicians pass OAG's requests for settlement payments to senior claim staff and transfers affected files to handler to initiate payment processing.

If the value of the claim does not exceed the settlement authority delegated to DRM by the OAG, and the file handler determines that there is no liability, he/she may issue denial of the claim.

If the value of the claim does not exceed the settlement authority delegated to DRM by the OAG, and the file handler establishes liability against the Commonwealth, then the file handler:
- Makes internal report to DRM if required by performance expectations
- Informs the state agency contact and solicits agency concurrence with recommendation for claim payment
- Contacts the claimant or his legal representative
- Negotiates settlement-in-principle (within monetary levels of authority assigned by DRM management) pursuant to the Virginia Tort Claims Act and to state settlement statutes
- Reviews and approves claim related payments (within monetary levels of authority assigned by DRM management, obtaining any necessary endorsements)
- Writes payment instructions to claim technicians on the face of payment documents
- Ensures that prompt payment requirements are met

After all claim payments have been made, handler closes file or, as necessary (e.g. subrogation payments, restitution payments, other monetary awards), directs claim technician to begin collections. For collections, handler makes file transfer note in Civitas, identifying debtors and specific amounts to be collected. See Receivables, below.

Files remain active until the collection process concludes.

Department of Corrections Tort Claims

Claim technicians create computerized records and retain initial responsibility for handling tort claim notices received from Virginia Department of Corrections inmates. Claim techs copy and send the notices that meet Virginia Tort Claim Act requirements to affected DOC facility along with a request for information about the incident. Claim technicians close DOC tort claim files if the facility does not respond within six months of request. If response received, claim technicians pass the information to senior claim staff for evaluation and, where necessary, reassignment to others on staff.

Virginia Department of Transportation Tort Claims

OAG has delegated to the Virginia Department of Transportation (VDOT) the authority to settle certain tort liability claims pre-litigation. According to its internal procedures VDOT investigates and denies, or settles and pays, qualified claims. Claimants wishing to challenge VDOT's resolution and/or claimants with complaints outside the scope of VDOT's delegated authority are referred by VDOT to DRM. Claims reported to DRM are handled as outlined in this document.

Automobile Liability Claims

Persons reporting automobile accidents involving state owned licensed-for-road-use motor vehicles are directed to call third party automobile claims administrator, Crawford & Company, at 866-219-6120.

DRM sends copies of Virginia Tort Claims Act notices involving the use of state owned licensed-for-road vehicles to Crawford & Company for handling. Claim technicians create a Civitas incident record for automobile claims and suits received at DRM and maintain original notices of claim with accompanying envelopes and all related paperwork on site with inactive files.

Large automobile losses and automobile losses involving sensitive subject matter are created as automobile claims in Civitas. DRM personnel are assigned to monitor these files and to work directly with third party claims administrator's file handlers to resolve outstanding issues.

Suits:
<u>Automobile litigation</u>:
When notified that suit has been filed, third party claims administrator sends the suit papers it receives to DRM. DRM staff reviews and confirms coverage, notifying Crawford as necessary. Crawford asks the OAG to assign outside counsel to defend covered suits. The OAG also assigns an Assistant Attorney General (AAG) to monitor the progress of each suit and to advise attorneys and affected claims handlers as necessary during the life of the suit.

<u>Other liability lawsuits defended by OAG</u>
When DRM receives suit papers filed against state agencies and state employees, the file handler determines the presence or absence of coverage under the risk management plan. File handlers share coverage determinations with affected state agencies and personnel. If the loss exposure of a file is valued at or above

$100,000, a file handler must prepare an initial large loss report within six months following file assignment and must distribute the report to the handler's supervisor, DRM Director and DRM Assistant Director. The file handler must update and re-distribute the large loss report when significant events occur (e.g. increase or decrease in exposure, additional significant facts are discovered or develop, etc.) as necessary.

If there is coverage under the risk management plan, the file is transferred to a claim technician for handling. Claim technicians send the OAG a complete set of documents collected from related claim(s) previously filed by the plaintiff(s). Claim technicians send copies of any and all Virginia Tort Claims Act notices with envelopes; claim technicians retain in DRM files all original Virginia Tort Claims Act notices and envelopes. Claim technicians update computer records to show that the affected case is being defended by the OAG, ask periodically for claim progress reports from the defending AAG, and enter progress notes into Civitas. Claim technicians consult with Senior Claim Managers when informed by AAG of significant events so that coverage can be revisited and/or reserves can be adjusted accordingly. Litigation expenses for OAG-defended cases are not paid from the State Insurance Reserve Trust Fund but are directed to the defendant state agency for payment from that agency's funds.

Defense provided by Gubernatorial appointees
When outside special counsel is appointed by the Office of the Governor to defend state agencies and their employees, a DRM claim staff member is assigned to remain in contact with assigned outside counsel and to monitor the progress of the litigation. File handler establishes and maintains accurate loss, legal and expense reserves throughout the life of the file; generates internal reports (e.g. large loss reports, pre-trial reports, etc.) correspondence and other communications in a clear, concise manner as required by performance expectations; approves related litigation expenses or indemnity payments within levels of monetary authority assigned by DRM management; provides written payment instructions to claim technicians and otherwise takes steps to ensure that prompt payment requirements are met. Payment for legal services provided by Governor-appointed counsel comes from the State Insurance Reserve Trust Fund. Legal bills are reviewed and approved as specified in Civitas Help.

If settlement is reached or adverse judgment entered, the defending AAG or appointed outside defense counsel sends payment requests

to DRM. File handler reviews materials provided, ensures that DRM has sufficient information to support payment, and approves payment (within levels of monetary authority assigned by DRM management, obtaining endorsements if necessary). File handler writes payment instructions to claim technicians on the face of payment documents, and makes sure that prompt payment requirements are met.

After all claim payments have been made, handler closes file or directs claim technician to begin collections if necessary (e.g. subrogation payments, restitution payments, other monetary awards). When collections activity will be necessary handler makes file transfer note in Civitas, identifying debtors and specific amounts to be collected. See Receivables, below.

Files remain active until the collection process concludes.

Receivables

Claim technicians review file transfer notes and generate invoices as notes direct to parties responsible for paying DRM. Claim technicians maintain collections files on diary.

When notified by Treasury Operations that payments have been received, technicians record receivable information in Civitas. File is closed when outstanding amounts have been collected.

If payment arrangements are not made or not honored claim technician notifies Treasury Operations to commence debt set off procedures. Claim technicians provide Treasury Operations with copies of file materials to support debt set off request.

Treasury Operations commences its debt set-off procedures. Claims accepted by debt set off process entitle DRM to collect any money the debtor may be owed by the Commonwealth. When Treasury Operations is notified that money may be available, it issues notice to the debtor that the money will be collected in thirty days. If no arrangements have been made by the debtor to make payment to DRM, Treasury Operations notifies Department of Accounts, and the money transfers to Treasury Operations.

Treasury Operations notifies the claim technician that money has been received via debt set off. The claim technician enters receivable data into Civitas and requests that Treasury Operations credit the related DRM fund. The claim technician closes the DRM file.

File closure and storage

Files close when all claim activities are complete. For litigated files, the handler updates Civitas records to show claim outcome. Claim technicians send a letter to the agency contact of the final disposition, mark file as "closed" in Civitas, affix a sticker to the file jacket showing the year of closure, and shelve with other closed files on DRM premises. DRM keeps closed files on site for two years. To transfer closed files to archives, claim technicians enter archive information into Civitas, contact representatives of the Library of Virginia for pickup, and otherwise ensure that files are transported to the state library in keeping with agency records retention policies.